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**WESTERN WATER
C O M P A N Y**

PH: 619-535-9282 • FX: 619-535-9260

4660 LA JOLLA VILLAGE DRIVE, SUITE 825 • SAN DIEGO, CALIFORNIA 92122

Michael Patrick George
President and Chief Executive Officer

Via Facsimile (916) 654-9780
Original to follow via U.S. Mail

December 10, 1998

Mr. Lester A. Snow
Executive Director
CALFED Bay Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Dear Mr. Snow,

Thank you for taking the time to meet with Western Water representatives recently. With decisions on Stage 1 Actions just days away from scheduled public release, there are a few important items relating to the transfer market that I would like to reiterate. First, Western Water Company is pleased that the Program regards water transfers as an essential part of a long-term solution for California's water future and a crucial method of easing the conflicts now impacting the Bay Delta ecosystem. As you know, I recently sent Secretary Babbitt a letter outlining a number of issues we consider critical to a successful transfer market, in particular the need for interim rules put in place at the beginning of Stage 1. Our concern is that the Stage 1 Actions still need additional refinement in this area in order to be successful. In addition, those enjoying Program benefits must be persuaded to desist in their efforts to frustrate the development of an efficient water market.

As you know, Western Water Company strongly supports the adoption of interim rules relating to water transfers. We see this as the only way to foster the type of water market that will enable a successful transition to Stage 2 for the CALFED Program. First, it will take a significant period for an effective market to develop once rules are put in place. Second, the rules will need to be tested under varying hydrological conditions. Third, the interim rules may require thoughtful, experience-based modification prior to Stage 2.

In the recent past, as we have been pursuing a number of pilot water transactions, we have repeatedly encountered obstacles that we believe are inimical to the development of a water market. Importantly, these obstacles are being thrown up by the same parties that, in the context of the CALFED process, profess to support the development of a water market. If CALFED is serious about its water transfer program, then we suggest that sharing in the benefits of the Program should

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be contingent upon supporting its major elements, including the water transfer element. It is simply inconsistent to demand greater volume and increased reliability via new facilities while procedurally thwarting the market transfers that could produce both benefits at lower cost and lesser environmental impact than "hard path" alternatives.

With respect to the current CALFED draft documents, we have reviewed the October 1, 1998 draft of the Water Transfer Program and the recent comment letters on the draft submitted by the San Diego Water County Authority and the Delta Urban Coalition. We concur with the comments of both these reviewers, with some exceptions. I would especially underscore their comments cautioning that CALFED actions should not increase the burden on transaction time or cost of transfers; and their calls for CALFED to resolve the problems related to physical constraints to Cross-Delta transfers and carriage water criteria. The major exception we take to these comments is their emphasis on direct district-to-district transfers. We believe that a "closed" market of this type will not produce the benefits CALFED is seeking from the transfer component.

The following additional comments provide our suggestions about CALFED's Stage 1 Actions and about elements missing from the Stage 1 Actions list.

Stage 1 Actions

Taken as a whole, the current set of Stage 1 Actions, while generally useful (with the caveats expressed in the review letters referred to above), would do too little either to level the playing field for transfer proponents or to streamline the transfer process. Much more should be expected of the Transfer Program as part of the Draft Preferred Alternative to be announced by CALFED at the end of the year. Areas that need to be strengthened are described in our letter to the Secretary.

On the specific elements of the Stage 1 Actions, we have the following comments:

Establishing a Clearinghouse. Echoing the comments of other reviewers, the key here will be in preserving a neutral role in any information dissemination activity. A clearinghouse function would be useful if information is factual, timely, complete and free from bias. The clearinghouse could be especially useful as the counties begin to develop and promulgate their own groundwater transfer ordinances in helping them to stay abreast of these activities and provide a single point of information dissemination.

Assisting the CALFED Agencies with Formulating New Policy. The intent of this Action is unclear from the document. We believe that the current climate of agency review, environmental documentation, and public review is more than adequate to protect the public interest in these activities and provide adequate information for such reviews in a timely way. This Action must not result in additional requirements for transfer proponents.

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Forecast and Disclosure. Accurate, timely information about conveyance capacity is essential to the development of a water transfer market in California and we strongly support this proposed Stage 1 Action. We concur with the comments of the San Diego County Water Authority, however, and believe that such information should be made available on all reaches of the state and federal water projects. However, it must be recognized that access to local conveyance facilities will also be vital to developing an efficient water market in the state. Providing such access should be a condition for participating in CALFED benefits.

Standardized Checklist. A standardize set of information required of transfer proponents which could be used by all of the reviewing agencies would be a good first step in streamlining requirements. However, such standardization should not be the cause of adding yet additional layers of information required of the proponents beyond what is required now.

Transferable Water, Reservoir Refill, and Carriage Water Criteria Issue Resolution. CALFED has identified several of the most vexing of the policy and operational issues impeding the development of a more robust transfer market. While the BDAC Transfers workgroup has been helpful in identifying these issues, it may be more productive now to assign these issues to a more intensive technical/stakeholder resolution process (coming back into the BDAC process) in order to achieve closure on these important issues in the near-term.

Monitoring. Sound accounting methods will be critical to the long-term development of the transfer market. To the extent feasible, such measures should be built into the CMARP monitoring proposals now being considered to avoid an ad hoc, transfer-by-transfer, set of additional monitoring requirements.

Transport Costs in State/Federal Facilities. It cannot be overstated how essential it is that criteria be developed, in a transparent process with full stakeholder input, to set transport costs in both existing and future conveyance facilities. In the final analysis, it will often be the cost of transporting water that will determine the economic viability of a proposed transfer. As such costs are being considered and developed, it must be born in mind that both the state and the federal projects were built with public dollars. While the governing laws on the projects call for full cost reimbursement, the facts are that only a tiny percentage of capital costs of the projects have been repaid to the taxpayer by the users. Given the reality of this situation, the public good (one measure of which is the ability to contract for least cost water) must be given equal deference with the state and federal contractors who have benefited from the projects. (Please see page two of my recent letter to Secretary Babbitt for further elaboration on this point.)

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Actions Missing from the Stage 1 List

Several key policy areas should be included as part of the work CALFED intends to accomplish relative to transfers during the first seven years after the Preferred Alternative is identified.

Protection of Water Rights in a Long-term Transfer. The perceived risk of potential loss of water rights in long-term transfers must be effectively addressed.

Additional Clarity on "Third Party Impacts". While we believe that direct negative third party impacts must be mitigated as a cost of completing a transfer, such a transfer should not be burdened by the cost of "ameliorating tangential or unrelated impacts". (See page two of Proposed Interim Water Transfer Rules, an attachment to Secretary Babbitt letter.) There should be reasonable procedures adopted to accurately identify and describe such impacts, determine the causal link to a proposed transfer, establish the extent of the impact and, if possible, determine whether and how it can be mitigated. For example, there should be a requirement for standing to seek compensation, and standard legal procedures relating to burden of proof, proof of damage, indemnification, et cetera, should be used.

Opening Up the Decision Process. The contractors to the state and federal facilities having a close association with the governing agencies charged with administering these facilities. The perception can develop that non-contractors simply do not have the same access to information and decision-making vital to their concerns. Achieving increased transparency in the regulated transfer market will reduce this perception and increase the vigor with which the private sector engages in developing the market.

Again, thank you for the opportunity to comment on the Draft Water Transfer Program and Stage 1 Actions. We look forward to working with you and your staff as the Program continues to develop and the Stage 1 actions are implemented.

Sincerely,



Cc: The Honorable Bruce Babbitt